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5 UNITED STATES DISTRICT COURT FOR THE
6 EASTERN DISTRICT OF WASHINGTON

7 GINA L. BRITTON, a single woman,
8 TAMI J. FRASE-PHILLIPS, a married
woman in her individual capacity, and on
behalf of others similarly situated,

9 Plaintiff,

10 v.

11 SERVICELINK FIELD SERVICES,
12 LLC, formerly known as LPS FIELD
SERVICES, INC.,

Defendants.

NO. 2:18-CV-0041-TOR

**STIPULATED PROTECTIVE
ORDER**

13 Before the Court is the parties' Stipulated Protective Order which was heard
14 without oral argument. Based on the parties' stipulation, the following Stipulated
15 Protective Order is HEREBY ENTERED:

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1 **1. PURPOSES AND LIMITATIONS**

2 Disclosure and discovery in this action is likely to involve production of
3 confidential, proprietary, or private information for which special protection
4 from public disclosure and from use for any purpose other than prosecuting this
5 litigation would be warranted. This Stipulated Protective Order does not confer
6 blanket protection on all disclosures or responses to discovery and the
7 protection it affords extends only to the limited information or items that are
8 entitled, under the applicable legal principles, to treatment as confidential. This
9 Stipulated Protective Order creates no entitlement to file confidential
10 information under seal; the procedures that must be followed and the standards
11 that will be applied when a party seeks permission from the Court to file
12 material under seal will be governed by applicable law.

13 **2. DEFINITIONS**

14 2.1. Party: any party to this action, including all of its officers,
15 directors, employees, consultants, retained experts, and outside counsel (and
16 their support staff).

17 2.2. Disclosure or Discovery Material: all items or information,
18 regardless of the medium or manner generated, stored, or maintained
19 (including, among other things, testimony, transcripts, or tangible things) that
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1 are produced or generated in disclosures or responses to discovery in this
2 matter.

3 2.3. “Confidential” Information or Items: information (regardless of
4 how generated, stored or maintained) or tangible things that qualify for
5 protection under standards developed under Fed. R. Civ. P. 26(c).

6 2.4. Receiving Party: a Party that receives Disclosure or Discovery
7 Material from a Producing Party.

8 2.5. Producing Party: a Party or non-party that produces Disclosure or
9 Discovery Material in this action.

10 2.6. Designating Party: a Party or non-party that designates information
11 or items that it produces in disclosures or in responses to discovery as
12 “Confidential.”

13 2.7. Protected Material: any Disclosure or Discovery Material that is
14 designated as “Confidential.”

15 2.8. Outside Counsel: attorneys who are not employees of a Party but
16 who are retained to represent or advise a Party in this action.

17 2.9. House Counsel: attorneys who are employees of a Party.

18 2.10. Counsel (without qualifier): Outside Counsel and House Counsel
19 (as well as their support staffs).
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1 2.11. Expert: a person with specialized knowledge or experience in a
2 matter pertinent to the litigation who has been retained by a Party or its/her/his
3 counsel to serve as an expert witness or as a consultant in this action and who is
4 not a past or a current employee of a Party and who, at the time of retention, is
5 not anticipated to become an employee of a Party. This definition includes a
6 professional jury or trial consultant retained in connection with this litigation.

7 2.12. Professional Vendors: persons or entities that provide litigation
8 support services (*e.g.*, photocopying; videotaping; translating; preparing
9 exhibits or demonstrations; organizing, storing, retrieving data in any form or
10 medium; etc.) and their employees and subcontractors.

11 **3. SCOPE**

12 The protections conferred by this Stipulation and Order cover not only
13 Protected Material (as defined above), but also (1) any information copied or
14 extracted from Protected Material; (2) all copies, excerpts, summaries, or
15 compilations of Protected Material; and (3) any testimony, conversations, or
16 presentations by Parties or their Counsel that might reveal Protected Material.
17 However, the protections conferred by this Stipulated Protective Order do not
18 cover information that is in the public domain or becomes part of the public
19 domain through trial or otherwise.

1 **4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL**

2 4.1 Basic Principles. A Receiving Party may use Protected Material
3 that is disclosed or produced by another Party or by a non-party in connection
4 with this case only for prosecuting, defending, or attempting to settle this
5 litigation. Such Protected Material may be disclosed only to the categories of
6 persons and under the conditions described in this Stipulated Protective Order.
7 When the litigation has been terminated, a Receiving Party must comply with
8 the provisions of section 10, below (FINAL DISPOSITION; TERMINATION
9 AND RETURN OF DOCUMENTS). Protected Material must be stored and
10 maintained by a Receiving Party at a location and in a secure manner that
11 ensures that access is limited to the persons authorized under this Stipulated
12 Protective Order.

13 4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless
14 otherwise ordered by the Court or permitted in writing by the Designating
15 Party, a Receiving Party may disclose any information or item designated
16 CONFIDENTIAL only to:

17 (a) the Receiving Party’s Outside Counsel of record in this
18 action, as well as employees of said Counsel to whom it is reasonably necessary
19 to disclose the information for this litigation;

1 (b) the named parties to this litigation and the officers, directors,
2 and employees (including House Counsel) of the Receiving Party to whom
3 disclosure is reasonably necessary for this litigation;

4 (c) experts (as defined in this Stipulated Protective Order) of the
5 Receiving Party to whom disclosure is reasonably necessary for this litigation
6 and who have signed the “Agreement to Be Bound by Protective Order”
7 (Exhibit A);

8 (d) the Court and its personnel;

9 (e) court reporters and videographers, and their staffs, present at
10 any hearing, deposition, or trial who have signed the “Agreement to Be Bound
11 by Protective Order” (Exhibit A);

12 (f) Professional Vendors to whom disclosure is reasonably
13 necessary for this litigation and who have signed the “Agreement to Be Bound
14 by Protective Order” (Exhibit A);

15 (g) during their depositions, witnesses in the action to whom
16 disclosure is reasonably necessary and who have signed the “Agreement to Be
17 Bound by Protective Order” (Exhibit A). Pages of transcribed deposition
18 testimony or exhibits to depositions that reveal Protected Material must be
19 separately bound by the court reporter and may not be disclosed to anyone
20 except as permitted under this Stipulated Protective Order.

1 (h) any mediator or other third party engaged by the Parties and
2 who have signed the “Agreement to Be Bound by Protective Order” (Exhibit
3 A);

4 (j) the author or recipient of a document containing the
5 information or a custodian or other person who otherwise possessed or knew
6 the information.

7 4.3 Filing Protected Material.

8 Before filing confidential material or discussing or referencing such
9 material in court filings, the filing party shall confer with the Designating Party
10 to determine whether the Designating Party will remove the confidential
11 designation, whether the document can be redacted, or whether a motion to seal
12 or stipulation and proposed order is warranted. Without written permission from
13 the Designating Party or a court order secured after appropriate notice to all
14 interested persons, a Party may not file in the public record in this action any
15 Protected Material. A Party that seeks to file under seal any Protected Material
16 must comply with applicable law. If a Receiving Party’s request to file
17 Protected Material under seal pursuant is denied by the court, then the
18 Receiving Party may file the information in the public record unless otherwise
19 instructed by the court.
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1 **5. DESIGNATING PROTECTED MATERIAL**

2 5.1 Exercise of Restraint and Care in Designating Material for
3 Protection.

4 Each party or non-party that designates information or items for
5 protection under this Stipulated Protective Order must use good faith efforts to
6 limit any such designation to specific material that qualifies under the
7 appropriate standards. A Designating Party must use good faith efforts
8 designate for protection only those parts of materials, documents, items, or oral
9 or written communications that qualify – so that other portions of the material,
10 documents, items, or communications for which protection is not warranted are
11 not swept unjustifiably within the ambit of this Stipulated Protective Order.

12 Mass, indiscriminate, or routinized designations are prohibited.
13 Designations that are shown to be clearly unjustified or that have been made for
14 an improper purpose (e.g., to unnecessarily encumber or retard the case
15 development process or to impose unnecessary expenses and burdens on other
16 parties), may expose the Designating Party to sanctions.

17 If it comes to a Party's or a non-party's attention that information or
18 items that it designated for protection do not qualify for protection, the Party or
19 non-party must promptly notify all other parties that it is withdrawing the
20 mistaken designation.

1 5.2 Manner and Timing of Designations. Except as otherwise provided
2 in this Stipulated Protective Order (see, e.g., second paragraph of section 5.2(a)
3 below), or as otherwise stipulated or ordered, material that qualifies for
4 protection under this Stipulated Protective Order must be clearly so designated
5 before the material is disclosed or produced. Producing Parties must designate
6 in conformity with this paragraph.

7 (a) For information in documentary form (e.g., paper or
8 electronic documents and deposition exhibits, but excluding transcripts of
9 depositions or other pretrial or trial proceedings): the Producing Party must
10 affix the legend “CONFIDENTIAL” to each page that contains protected
11 material. If only a portion or portions of the material on a page qualifies for
12 protection, the Producing Party also must clearly identify the protected
13 portion(s) (e.g., by making appropriate markings in the margins). A Party or
14 non-party that makes original documents or materials available for inspection
15 need not designate them for protection until after the inspecting Party has
16 indicated which material it would like copied and produced. During the
17 inspection and before the designation, all of the material made available for
18 inspection shall be deemed “CONFIDENTIAL.” After the inspecting Party has
19 identified the documents it wants copied and produced, the Producing Party
20 must determine which documents, or portions thereof, qualify for protection
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1 under this Stipulated Protective Order, then, before producing the specified
2 documents, the Producing Party must affix the legend “CONFIDENTIAL” on
3 each page that contains Protected Material. If only a portion of the material on a
4 page qualifies for protection, the Producing Party also must clearly identify the
5 protected portion(s) (e.g., by making appropriate markings in the margins).

6 (b) Testimony given in deposition or in other pretrial
7 proceedings: the Party or non-party offering or sponsoring the testimony must
8 identify on the record, during the deposition or other proceeding, all protected
9 testimony. When it is impractical to identify separately each portion of
10 testimony that is entitled to protection, and when it appears that substantial
11 portions of the testimony may qualify for protection, the Party or non-party that
12 sponsors, offers, or gives the testimony may invoke on the record (before the
13 deposition or proceeding is concluded) a right to have up to twenty (20) days to
14 identify the specific portions of the testimony as to which protection is sought.
15 Only those portions of the testimony that are appropriately designated for
16 protection within the twenty (20) days shall be covered by the provisions of this
17 Stipulated Protective Order.

18 Transcript pages containing Protected Material must be separately bound
19 by the court reporter, who must affix to the top of each such page the legend
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1 “CONFIDENTIAL,” as instructed by the Party or nonparty offering or
2 sponsoring the witness or presenting the testimony.

3 (c) Information produced in some form other than documentary,
4 and for any other tangible items: the Producing Party must affix in a prominent
5 place on the exterior of the container or containers in which the information or
6 item is stored the legend “CONFIDENTIAL.” If only a portion or portions of
7 the information or item warrant protection, the Producing Party, to the extent
8 practicable, shall identify the protected portion(s).

9 5.3 Inadvertent Failures to Designate. If timely corrected, an
10 inadvertent failure to designate qualified information or items as “Confidential”
11 does not, standing alone, waive the Designating Party’s right to secure
12 protection under this Stipulated Protective Order for such material. If material is
13 appropriately designated as “Confidential” after the material was initially
14 produced, the Receiving Party, on timely notification of the designation, must
15 make reasonable efforts to assure that the material is treated in accordance with
16 the provisions of this Stipulated Protective Order.

17 **6. CHALLENGING CONFIDENTIALITY DESIGNATIONS**

18 6.1 Timing of Challenges. Any Party may challenge a designation of
19 confidentiality at any time. Unless a prompt challenge to a Designating Party’s
20 confidentiality designation is necessary to avoid foreseeable, substantial
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1 unfairness, unnecessary economic burdens, or a later significant disruption or
2 delay of the litigation, a Party does not waive its right to challenge a
3 confidentiality designation by electing not to mount a challenge promptly after
4 the original designation is disclosed.

5 6.2 Meet and Confer. The Challenging Party shall initiate the dispute
6 resolution process by providing written notice of each designation it is
7 challenging and describing the basis for each challenge. The parties shall
8 attempt to resolve each challenge in good faith and must begin the process by
9 conferring directly (in voice to voice dialogue; other forms of communication
10 are not sufficient) within 14 days of the date of service of notice. In conferring,
11 the Challenging Party must explain the basis for its belief that the
12 confidentiality designation was not proper and must give the Designating Party
13 an opportunity to review the designated material, to reconsider the
14 circumstances, and, if no change in designation is offered, to explain the basis
15 for the chosen designation. A challenging Party may proceed to the next stage
16 of the challenge process only if it has engaged in this meet and confer process
17 first or establishes that the Designating Party is unwilling to participate in the
18 meet and confer process in a timely manner. The parties must attempt to resolve
19 any dispute regarding confidential designations without court involvement. Any
20 motion regarding confidential designations or for a protective order must
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1 include a certification, in the motion or in a declaration or affidavit, that the
2 movant has engaged in a good faith meet and confer conference with other
3 affected parties in an effort to resolve the dispute without court action. The
4 certification must list the date, manner, and participants to the conference.

5 6.3 Judicial Intervention. If the parties cannot resolve a challenge
6 without court intervention, the Challenging Party may issue a written notice to
7 the Designating Party providing with specificity those materials as to which it
8 still challenges the confidential designation. With 21 days of such notice, the
9 Designating Party may file and serve a motion to retain confidentiality under
10 Local Civil Rule 7. Each such motion must be accompanied by a competent
11 declaration affirming that the movant has complied with the meet and confer
12 requirements imposed in the preceding paragraph. Failure by the Designating
13 Party to make such a motion including the required declaration within 21 days
14 shall automatically waive the confidentiality designation for each challenged
15 designation. In addition, the Challenging Party may file a motion challenging a
16 confidentiality designation at any time if there is good cause for doing so,
17 including a challenge to the designation of a deposition transcript or any
18 portions thereof. Any motion brought pursuant to this provision must be
19 accompanied by a competent declaration affirming that the movant has

1 complied with the meet and confer requirements imposed by the preceding
2 paragraph.

3 The burden of persuasion in any such challenge proceeding shall be on
4 the Designating Party. Frivolous challenges, and those made for an improper
5 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
6 parties) may expose the Challenging Party to sanctions. Unless the Designating
7 Party has waived the confidentiality designation either in writing or by failing
8 to file a motion to retain confidentiality as described above, all parties shall
9 continue to afford the material in question the level of protection to which it is
10 entitled under the Producing Party's designation until the court rules on the
11 challenge.

12 **7. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
13 **PRODUCED IN OTHER LITIGATION**

14 If a Receiving Party is served with a subpoena or an order issued in other
15 litigation or proceedings that compels disclosure of any information or items
16 designated in this action as "CONFIDENTIAL," the Receiving Party must:

17 (a) promptly, and in no event more than three (3) court days
18 after receiving the subpoena or order, notify the designating party in writing
19 (e.g. via email, facsimile, or hand delivery). Such notification must include a
20 copy of the subpoena or order;
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1 (b) promptly notify in writing the Party who caused the
2 subpoena or order to issue in the other litigation or proceeding that some or all
3 of the material covered by the subpoena or order is subject to this Stipulated
4 Protective Order. Such notification shall include a copy of this Stipulated
5 Protective Order; and

6 (c) cooperate with respect to all reasonable procedures sought to
7 be pursued by the Designating Party whose confidential material may be
8 affected.

9 If the Designating Party timely seeks a protective order, the Party served
10 with the subpoena or court order shall not produce any information designated
11 in this action as “CONFIDENTIAL” before a determination by the court from
12 which the subpoena or order issued, unless the Party has obtained the
13 Designating Party’s permission. The Designating Party shall bear the burdens
14 and the expenses of seeking protection in that court of its confidential material –
15 and nothing in these provisions should be construed as authorizing or
16 encouraging a Receiving Party in this action to disobey a lawful directive from
17 another court.

18 **8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

19 If a Receiving Party learns that, by inadvertence or otherwise, it has
20 disclosed Protected Material to any person or in any circumstance not
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1 authorized under this Stipulated Protective Order, the Receiving Party must
2 immediately (a) notify in writing the Designating Party of the unauthorized
3 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
4 Protected Material, (c) inform the person or persons to whom unauthorized
5 disclosures were made of all the terms of this Stipulated Protective Order, and
6 (d) request that such person or persons execute the “Acknowledgment and
7 Agreement to Be Bound” that is attached hereto as Exhibit A.

8 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR**
9 **OTHERWISE PROTECTED MATERIAL**

10 When a Producing Party gives notice to Receiving Parties that certain
11 inadvertently produced material is subject to a claim of privilege or other
12 protection, the obligations of the Receiving Parties are those set forth in Federal
13 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
14 whatever procedure may be established in an order or agreement that provides
15 for production without prior privilege review.

16 **10. FINAL DISPOSITION; RETURN OF DOCUMENTS**

17 Unless otherwise ordered or agreed in writing by the Producing Party,
18 within 60 days after the termination of this action, including all appeals, each
19 Receiving Party must return all Protected Material to the Producing Party. As
20 used in this subdivision, “all Protected Material” includes all copies, abstracts,
21 compilations, summaries or any other form of reproducing or capturing any of

1 the Protected Material. With permission in writing from the Designating Party,
2 the Receiving Party may destroy some or all of the Protected Material instead of
3 returning it. Whether the Protected Material is returned or destroyed, the
4 Receiving Party must submit a written certification to the Producing Party (and,
5 if not the same person or entity, to the Designating Party) by the sixty day
6 deadline that identifies (by category, where appropriate) all the Protected
7 Material that was returned or destroyed and that affirms that the Receiving
8 Party has not retained any copies, abstracts, compilations, summaries or other
9 forms of reproducing or capturing any of the Protected Material.

10 Notwithstanding this provision, Counsel are entitled to retain an archival copy
11 of all pleadings, motion papers, transcripts, legal memoranda, correspondence,
12 deposition and trial exhibits, expert reports, attorney work product, and
13 consultant and expert work product, even if such materials contain Protected
14 Material. Any such archival copies that contain or constitute Protected Material
15 remain subject to this Stipulated Protective Order as set forth herein.

16 Even after the termination of this litigation, the confidentiality
17 obligations imposed by this Stipulated Protective Order shall remain in effect
18 until a Designating Party agrees otherwise in writing or a court order otherwise
19 directs.

1 **11. MISCELLANEOUS**

2 11.1. Right to Further Relief. Nothing in this Stipulated Protective Order
3 abridges the right of any person to seek its modification by the Court in the
4 future.

5 11.2. Right to Assert Other Objections. By stipulating to the entry of this
6 Stipulated Protective Order no Party waives any right it otherwise would have
7 to object to disclosing or producing any information or item on any ground not
8 addressed in this Stipulated Protective Order. Similarly, no Party waives any
9 right to object on any ground to use in evidence of any of the material covered
10 by this Stipulated Protective Order.

11 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

12 DATED this 6th day of September, 2018.

13 TERRELL MARSHALL LAW
14 GROUP PLLC

FREY BUCK, P.S.

15 By: /s/ Beth E. Terrell, WSBA #26759

By: /s/ Ted Buck, WSBA #22029

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PURSUANT TO STIPULATION, IT IS HEREBY ORDERED.

DATED September 6, 2018.




THOMAS O. RICE
Chief United States District Judge

1
2 EXHIBIT A

3 ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

4 I, _____ [print or type full name], of
5 _____ [print or type full address], declare
6 under penalty of perjury that I have read in its entirety and understand the
7 Stipulated Protective Order that was issued by the United States District Court for
8 the Eastern District of Washington on [date] in the case of **Britton v. ServiceLink**
9 **Field Service, LLC (No. 2:18-cv-00041-TOR)**. I agree to comply with and to be
10 bound by all the terms of the Stipulated Protective Order and I understand and
11 acknowledge that failure to so comply could expose me to sanctions and
12 punishment in the nature of contempt. I solemnly promise that I will not disclose in
13 any manner any information or item that is subject to the Stipulated Protective
14 Order to any person or entity except in strict compliance with the provisions of the
15 Stipulated Protective Order.

16 I further agree to submit to the jurisdiction of the United States District
17 Court for the Eastern District of Washington for the purpose of enforcing the terms
18 of the Stipulated Protective Order, even if such enforcement proceedings occur

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after termination of the action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____